

Indiana Department of State Revenue

Revenue Ruling #2002-05ST

March 14, 2002

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

Sales/Use Tax – Consequences of Proposed Transaction Concerning an Aircraft

Authority: IC 6-2.5-5-8, IC 6-2.5-8-8, IC 6-2.5-3-2, IC 6-2.5-3-4, IC 6-2.5-2-1, IC 6-2.5-4-10

The taxpayer requests the Department to rule, should the taxpayer decide to execute the proposed transaction as described herein, whether or not:

1. The taxpayer will be allowed to acquire the aircraft exempt from sales and use tax because it is acquiring the aircraft for resale;
2. The taxpayer will be required to collect and remit sales and use tax on each rental payment as collected. The rental of the aircraft through the agent, along with separately stated charges by the agent for services, will not relieve the taxpayer of a duty to collect tax on each rental payment; and
3. To the extent sales are contracted through the agent's business, also a retail merchant, the agent may commingle sales of the taxpayer with its own sales and report and remit to the Department under the agent's retail merchant number. To the extent the taxes are paid by the agent the taxpayer will be relieved of the duty to collect and remit taxes on those sales.

STATEMENT OF FACTS

The taxpayer, a Limited Liability Company, proposes to acquire a single engine piston aircraft for rental to students and licensed pilots training and operating out of Indiana airports. The taxpayer proposes to acquire customers through the use of a marketing agreement in which it engages local fixed base operators and flight school operators to serve as agents in obtaining and scheduling customers for the use of its aircraft. The taxpayer will be responsible for licensing, maintenance, storage and insurance of the

aircraft. The taxpayer will not have operational control of the aircraft when rented to a customer. The taxpayer will not use the aircraft for its own use, but rather, it will be exclusively held and operated for the rental to others. The taxpayer will obtain a Retail Merchant's Certificate and remit sales tax on each use of the aircraft.

DISCUSSION

The taxpayer submitted a copy of the marketing agreement referenced in the "Statement of Facts" section of this ruling for Departmental review. The marketing agreement reveals that the relationship between the taxpayer and the local fixed based operators and flight school operators, hereinafter "agents", will be one of lessor and lessee. The following sales/use tax consequences result:

1. IC 6-2.5-5-8 provides that tangible personal property can be purchased exempt from sales/use tax when acquired for lease/rental purposes. The taxpayer, therefore, may purchase the aircraft exempt from sales/use tax upon issuing a proper Indiana sales/use tax exemption certificate to the seller (IC 6-2.5-8-8);
2. The agents will be leasing/renting the aircraft from the taxpayer for leasing/renting purposes. The agents may issue a proper Indiana sales/use tax exemption certificate to the taxpayer (IC 6-2.5-8-8) and not be required to pay sales/use tax to the taxpayer on the lease/rental payments as a result of the above mentioned lease/rental exemption statute IC 6-2.5-5-8. Should the agents, however, use the aircraft for non-lease/rental purposes the agents must pay use tax (IC 6-2.5-3-2) to the Department as provided by IC 6-2.5-3-4; and
3. Pursuant to IC 6-2.5-2-1 and IC 6-2.5-4-10, the agents will be required to collect sales/use tax from their lease/rental customers.

RULING

The Department rules that the taxpayer's proposed transaction concerning an aircraft will result in the following sales/use tax consequences:

1. The taxpayer may purchase the aircraft exempt from sales/use tax;
2. The taxpayer will not be required to collect sales/use tax from the agents on the lease/rental payments made by the agents to the taxpayer. The agents, however, will be required to pay use tax to the Department for all non-lease/rental use of the aircraft; and
3. The agents will be required to collect and remit sales/use tax to the Department on the lease/rental of the aircraft to their customers.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

INDIANA DEPARTMENT OF STATE REVENUE